

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

DIVISION I

CACR07-468

QUABINA RASHEEN PENSON
APPELLANT

JANUARY 23, 2008

V.

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2003-984]

HON. RALPH WILSON,
CIRCUIT JUDGE

STATE OF ARKANSAS
APPELLEE

MOTION DENIED; REBRIEFING
ORDERED

This is a no-merit appeal from the revocation of appellant's suspended sentence. Appellant Quabina Rasheen Penson pled guilty to sale or delivery of cocaine on July 20, 2004, for which he was sentenced to ninety-six months' imprisonment in the Arkansas Department of Correction, followed by a thirty-six month suspended sentence, and assessed costs in the amount of \$500. Penson was released on June 28, 2006, and the State filed a petition to revoke the suspended imposition of sentence on August 28, 2006, alleging that Penson violated the conditions of the suspension by: (1) failing to pay fines, costs and fees; (2) failing to report to parole as directed; (3) failing to pay supervision fees; (4) failing to

notify the sheriff and parole of his current address and employment; (5) violating conditions of his parole; and (6) possessing cocaine with intent to sell.

The trial court granted Penson's motion for directed verdict as to grounds two through five above, but denied the motion as to grounds one and six. The trial court found by a preponderance of the evidence that Penson inexcusably failed to comply with the condition which required him to pay all fines, costs and fees, and to live a law-abiding life because he committed the crimes of possession of a controlled substance, resisting arrest, and fleeing. On October 24, 2006, the trial court sentenced Penson to eighteen years' imprisonment. Penson filed a timely notice of appeal. His attorney has filed a motion to be relieved as counsel, alleging that there are no meritorious issues presented in this appeal. Penson was provided a copy of his counsel's brief and was notified of his right to file a list of points on appeal within thirty days. He filed no points. The State did not file a responsive brief due to the absence of pro se points. We remand for rebriefing.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Supreme Court and Court of Appeals, an attorney's request to withdraw from appellate representation based upon a meritless appeal must be accompanied by a brief that contains a list of all rulings adverse to his client that were made on any objection, motion, or request made by either party. *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). The argument section of the brief must contain an explanation of why each adverse ruling is not a meritorious ground for reversal. *Id.* This court is bound to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous. *Campbell v. State*,

74 Ark. App. 277, 47 S.W.3d 915 (2001). If counsel fails to address all possible grounds for reversal, this court can deny the motion to withdraw and order rebriefing. *Sweeney v. State*, 69 Ark. App. 7, 9 S.W.3d 529 (2000).

Counsel does not list each adverse ruling with respect to the objections made by him at trial. Instead, he asserts that the State need only prove by a preponderance of the evidence that the defendant inexcusably failed to comply with a condition of his probation. Even though the petition may allege multiple violations, the State need only prove one. *Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000). Counsel points out that the direct testimony of the collector of fines and costs was that Penson was assessed costs in the amount of \$500, and no payments had been made.

However, Rule 4-3(j)(1) dictates the contents of a no-merit brief:

A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and Addendum. The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The abstract and Addendum of the brief shall contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the circuit court.

(Emphasis added.) As we have oftentimes stated, it is imperative that counsel follow the appropriate procedure when filing a motion to withdraw as counsel. *Walton v. State*, 94 Ark. App. 229, 228 S.W.3d 524 (2006). In furtherance of protecting the constitutional rights of an appellant, it is the duty of both counsel and this court to perform a full examination of the proceedings as a whole to determine if an appeal would be wholly frivolous. *Id.*

Accordingly, counsel is directed to file a brief on the merits or one that complies with Ark. Sup. Ct. R. 4-3(j)(1). If a no-merit brief is filed, counsel's motion and brief will be forwarded by the Clerk to appellant so that, within thirty days, he again may raise any points he chooses in accordance with Ark. Sup. Ct. R. 4-3(j)(2). Counsel's motion to withdraw is denied, and the case is remanded for rebriefing.

Motion denied; rebriefing ordered.

PITTMAN, C.J., and BAKER, J., agree.